



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



CONFLICT OF INTEREST OPINION EC-COI-84-27

FACTS:

You are the head of an administrative unit in the Judicial Department. In that capacity you are responsible for certifying vouchers for the reimbursement of expenses incurred by employees of that unit. An employee of that unit who lives in the western part of the state will be on a temporary assignment in the eastern part of the state in March or April of 1984. Instead of commuting daily, the employee proposes to use and occupy a condominium in the eastern part of the state which is owned by another employee of the unit which will be vacant during that time. You indicate that, ordinarily, the employee would stay at a hotel and eat meals at a restaurant. If the employee stays in the condominium, meals would be prepared on the premises. You propose that the occupying employee reimburse the owner employee at a rate not to exceed the ordinary hotel rate, and the cost of food purchased, which you would approve pursuant to [Citation Omitted].

QUESTION:

Is the reimbursement arrangement which you propose permissible under G. L. c. 268A?

ANSWER:

Yes, subject to the limitations set forth below.

DISCUSSION:

Employees of an administrative unit within the Judicial Department are "state employees" for the purposes of G.L. c. 268A inasmuch as they perform services for a state agency within the meaning of G.L. c. 268A, s.1(p).[1] For the purposes of the question which you pose, the relevant sections of G.L. c. 268A are s.s.7 and 23.

1. Section 7

This section in general prohibits a state employee from having a direct or indirect financial interest in a contract made by a state agency. Based upon the information which you have provided, it does not appear that the granting of lodging reimbursement by the occupying employee to the owner employee would give the owner employee a financial interest in a contract made by a state agency. The lodging reimbursement, standing alone, does not create a contract subject to the s.7 prohibition. Cf. EC-COI-81-142 (reimbursement of expenses is not regarded as compensation for the purposes of

s.4). The lodging reimbursement is analogous to other benefits which accrue to state employees by virtue of their employment status. See, G.L. c. 32 (retirement benefits); G.L. c. 32A (group insurance benefits). While the expectation of these benefits may have a contractual foundation, see, Opinion of the Justices, 364 Mass. 847, 856-863 (1973), the Commission does not regard such benefits as creating the kind of contract which s.7 was designed to prevent. Compare, EC-COI-83-173. Inasmuch as the acceptance by an occupying employee of lodging reimbursement is not a contract under s.7, the receipt by the owner employee of the same reimbursement would likewise not constitute a prohibited financial interest in a contract under s.7.

2. Section 23

In your capacity as head of the administrative unit in the Judicial Department, you are subject to the standards of conduct which appear in G.L. c. 268A, s.23. These standards, which apply to all public employees, are designed to avoid situations which may either result in the misuse of a public position for unwarranted private gain or else create the perception that private interests have unduly interfered with the performance of public responsibilities. Specifically, s.23 paragraph 2(2) prohibits a state employee from using or attempting to use his official position to secure unwarranted privileges or exemptions for himself or others. Section 23 paragraph 2(3) prohibits a state employee from giving reasonable basis, by his conduct, for the impression that any person can improperly influence or unduly enjoy his favor in the performance of his official duties or that he is unduly affected by the kinship, rank, position, or influence of any party or person. Based upon the information which you have provided, it appears that the single isolated use of the proposed reimbursement arrangement during a two-month period in 1984 would not violate s.23.

With respect to s.23 paragraph 2(2), the limited lodging reimbursement to the owner employee would not appear to be an unwarranted privilege. This is not to say, however, that a more frequent use of the reimbursement arrangement would satisfy s.23 paragraph 2(2). The regular subsidization of a state employee's condominium expenses is a benefit which is not available to the general public. When used on a more-than-isolated basis, it becomes an unwarranted privilege to the owner employee. As head of the administrative unit, the restrictions of s.23 paragraph 2(2) would come into play if you were called upon to certify vouchers which would ultimately result in the state's subsidization of an owner employee's condominium on a regular basis. Therefore, should another situation subsequently arise where a similar voucher request is made of you, you should renew your advisory opinion with the Commission. With respect to s.23 paragraph 2(3), the Commission recently concluded that a district Court Judge violated this provision by assigning defendants to attend alcohol education programs given by a corporation employing his daughter. See In the Matter of Robert N. Scola, 1983 Ethics Commission iv. In that case, the employee gave reasonable basis for the impression that his assignment decisions were unduly affected by the fact that the corporation employed his daughter. Similar issues would be raised if you were to regularly permit an owner employee to receive lodging reimbursements from occupying employees. In such cases, you might be creating the impression that the owner employee would unduly

enjoy your favor in your assignment decisions and voucher certifications.

DATE AUTHORIZED: February 29, 1984

[1] G.L. c. 268A, s.1(p) defines "state agency," as any department of a state government including the executive, legislative or judicial, and all councils thereof and thereunder, and any division, board, bureau, commission, institution, tribunal or other instrumentality within such department and any independent state authority, district, commission, insrumentality or agency, but not an agency of a county, city or town,